



**Town of Uxbridge
Zoning Board of Appeals
21 So. Main St.
Uxbridge, MA 01569
(508) 278-8603**

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Minutes of the Uxbridge Zoning Board of Appeals Meeting held on Wednesday, November 1, 2006 at 7:00 P.M. in the Board of Selectmen's Meeting Rm., Uxbridge Town Hall, 21 So. Main St., Uxbridge, MA:

Members Present: Chairman Ernie Esposito, Carol Masiello, John Higgins and Mark Wickstrom.

Member Absent: None

The meeting being duly called, properly posted and a quorum being present, Chairman Esposito convened the meeting at 7:00 P.M.

PUBLIC HEARINGS (NEW):

FY07-11: The applicants / owners of record, David R. and Cheryl E. Morin, are seeking, in the Agricultural Zone, to create two lots located at 101 Aldrich St., Uxbridge, MA, on what is now known as Town of Uxbridge Assessor's Map 45, Parcel 0968, Worcester District Registry of Deeds' Bk. 18285, Pg. 216, and are further seeking a Frontage Variance of 160.10 ft. from the 300 ft. Frontage requirement on Lot 1 (5.52 acres) and a Frontage Variance of 192.72 ft. from the 300 ft. Frontage requirement on Lot 2 (9.98 acres), in order to construct two dwellings on a +/- 15 acre parcel which lacks requisite Frontage of 300 ft. The applicant, David Morin, and his engineer, Mark Allen of Allen Engineering, were present, as was Gerald A. Lemire, Esq., legal representative to the potential buyer of Mr. Morin's property. The engineer and attorney explained that Mr. Morin was attempting to divide 15 +/- acres into two house lots and further that in other towns there was precedence for creating non-conforming lots when the area was more than the required square footage. They cited lot shape as a hardship for their Variance requests. They went on to say that if the Variances were granted that they would then need to approach the Planning Board with an ANR (Approval Not Required) Plan. Atty. Lemire and Mr. Allen suggested that should the ZBA not grant the Variances that their clients would bring forward a 5-6 lot subdivision instead. Both Chairman Esposito and Ms. Masiello queried as to whether the applicant was asking the Board to create non-conforming lots. The representatives confirmed that this was so and went on to say that the lot shape substantiated a hardship to Mr. Morin. Chairman Esposito suggested that the applicant seek a small Variance to create one buildable lot. One abutter, Robert Stefanick, was present and indicated to the Board members that he would rather see two new homes there rather than a 5-6 lot subdivision. Ms. Masiello questioned whether the applicant could meet the requirement of 300 ft. of frontage on both roadways of a corner lot and Mr. Allen suggested that they could flare out the corner lots to meet that requirement. Ms. Masiello was emphatic about not creating two illegal lots. After much discussion, Chairman Esposito entertained a motion to grant

a Frontage Variance of 160.10 ft. from the 300 ft. Frontage requirement on Lot 1 (5.52 acres) and a Frontage Variance of 192.72 from the 300 ft. Frontage requirement on Lot 2 (9.98 acres), in the Agricultural Zone, in order to create two buildable lots on a pre-existing non-conforming parcel located at 101 Aldrich St., Uxbridge, MA that already lacks requisite frontage for that Zone. When no motion was made to grant the request for the two Variances, Chairman Esposito ruled that request was DENIED.

CONTINUED / NEW / OTHER BUSINESS

New Business:

FY07-07: The applicant, MKR Investments, Inc., and the owner of record, John W. Cnossen, are seeking, in the Industrial Zone, a Finding of Similar Use, in order to obtain a building permit to construct a 62.5 ft. x 42 ft., 3-bay car wash and equipment room, said car wash not a permitted use in that Zone without ZBA authorization, on a parcel located at 454 Quaker Highway, Uxbridge, MA, Town of Uxbridge Assessor's Map 40, Parcel 3681, Worcester County Registry of Deeds' Bk. 13306, Deed Pg. 115. Barry Desruisseaux represented MKR Investments, Inc. and told the Board members that they were hoping to construct and run a 3-bay car wash on property located between the Quaker Inn and Conference Center and L'il Texas. Mr. Desruisseaux explained that this was the same operation he came to the Board for on Douglas Street less one bay and indicated that he was getting a sewer easement from the Cnossen property. He further stated that until public water was brought further down Quaker Highway that they would be using an on-site private well and that they would be using 200-1,000 gallons per day. Carol Masiello asked if he knew the site was in the Groundwater Protection Overlay District and he responded affirmatively noting that ConComm already approved the project and that they had also received DEP's approval (which he promised to provide [and did] to the Board the next morning). Mr. Desruisseaux assured the Board that there would be no big trucks and that he was looking to run the operation 24/7. Mark Wickstrom referenced Sec. VII ss A of the Zoning By-laws re: the Building Inspector requiring a Planning Board Special Permit vs. a Finding of Similar Use from the ZBA. Some discussion of this matter went on. Mr. Desruisseaux indicated that he did not care to negotiate hours of operation and cited that snow plows might want to use the car wash's services at 3:00 A.M. Carol Masiello asked if the DPW was comfortable with this operation in the Groundwater Protection Overlay District and he indicated that they were and indicated that they needed to maintain the same rate of return into the ground. No abutters were present. Mark Wickstrom questioned Mr. Desruisseaux on the buffer zone relative to the stream on the lot and Mr. Desruisseaux reiterated that he would provide ConComm's approval paperwork. When Mr. Wickstrom questioned the number of cars and Mr. Desruisseaux responded that he figured 19-22. Carol Masiello asked Mr. Wickstrom whether he would be more comfortable with an approval conditioned by the need to obtain Planning Board Special Permit granting for a drive-thru. Mr. Wickstrom indicated that it would be better for the applicant. Carol Masiello made a motion, seconded by John Higgins, to make a Finding of Similar Use, with one condition (see below), in the Industrial Zone, in order to obtain a building permit to construct and operate a 62.5 ft. x 42.0 ft. 3-bay car wash and equipment room shown on a Site Plan prepared by Andrews Survey and Engineering, for MKR Investments, Inc., dated September 27, 2006, for a Project entitled "Bright - Shine Auto Spa", said car wash not a permitted use in that Zone without ZBA authorization, on a parcel located at 454 Quaker Hghy., Uxbridge, MA. Condition: The hours of operation shall be twenty-

four (24) hours a day, seven (7) days a week. The vote was 3-0-0 in favor of the motion.

FY07-08: The applicants / owners of record, James and Linda Braney, are seeking, in the Agricultural Zone, a Determination of a Pre-existing, Non-conforming Lot, in order to obtain a building permit to construct a laundry room, bathroom with full basement off the back of their existing house (size 14 ft. x 16 ft.), on a parcel located at 776 Hartford Ave. West, Uxbridge, MA, Town of Uxbridge Assessor's Map 21, Parcel 1465, Worcester County District Registry of Deeds' Bk. 06847, Pg. 325, because said parcel does not meet the minimum area and frontage requirements for that Zone. The applicants were present and explained that they only wanted to make an existing bathroom larger and that they were seeking a Determination, not a Variance, on a pre-existing, non-conforming lot. John Higgins made a motion, seconded by Carol Masiello, to make a Determination of a Pre-Existing Non-Conforming Lot, in the Agricultural Zone, in order to obtain a building permit to construct a laundry room / bathroom with full basement off the back of the existing house (size to be 14 ft. x 16 ft.), on a parcel located at 776 Hartford Ave. West, Uxbridge, MA. The vote was 3-0-0 in favor of the motion.

FY07-09: The applicant / owner of record, Holly Haller, is seeking, in the Flood Plain, a Determination, in order to obtain a building permit to construct a deck off her existing addition and a screened porch off the back, on a parcel located at 107 Old Millville Rd., Uxbridge, MA, Town of Uxbridge Assessor's Map 35, Parcel 4748, Worcester County District Registry of Deeds' Bk. 17845, Pg. 020, because said parcel is located in the Flood Plain. The applicant was present as was her architect, Philip Wheelock. They provided the Board members with a three-page handout to show more specifically what they want to do. Mr. Wheelock explained that his client wants to build a screened-in porch in back and then open the deck to go around to the side door. Mr. Wheelock went on to say that the project was approved by ConComm and that the porch would be constructed atop piers. Ms. Masiello asked how much disturbance of the area the project required to which Mr. Wheelock replied that there would be no substantial disturbance. Ms. Masiello interjected that, if the Determination was made in the applicant's favor, that the ConComm decision would have to be attached to the ZBA's decision. Two abutters, Rita and Allan Hinc, were present and testified that the mosquitoes were fierce on the properties in this locale and that they had no difficulties with the proposal. Another unknown abutter contacted Chairman Esposito prior to the meeting to indicate their approval of the proposal. Carol Masiello made a motion, seconded by John Higgins, to make a Determination of a Pre-Existing Non-Conforming Lot, in the FLOOD PLAIN DISTRICT, with one condition (below), in order to obtain a building permit to construct a deck off her existing addition and a screened porch off the back (of the deck), on a parcel located at 107 Old Millville Rd., Uxbridge, MA. Condition: The Conservation Commission's Order of Conditions shall be attached to the Determination. The vote was 3-0-0 in favor of the motion.

FY07-10: The applicants / owners of record, David and Diane Siden, are seeking, in the Agricultural Zone, a Determination of a Pre-existing, Non-conforming Lot, in order to obtain a building permit to construct a 16 ft. x 26 ft. family room off the right side of their existing house on a parcel located at 301 Aldrich St., Uxbridge,

MA, Town of Uxbridge Assessor's Map 49, Parcel 0523, Worcester County District Registry of Deeds' Bk. 12429, Pg. 079, because said parcel does not meet the minimum area and frontage requirements for that Zone. The applicants were present. Chairman Esposito expressed confusion over the house number which should apparently be 301 not 370. Applicants agreed that the number was 301 and indicated there would be no finished basement. Carol Masiello made a motion, seconded by John Higgins, to make a Determination of a Pre-Existing Non-Conforming Lot, in the Agricultural Zone, in order to obtain a building permit to construct a 16 ft. x 26 ft. family room off the right side of the existing house, on a parcel located at 301 Aldrich St., Uxbridge, MA. The vote was 3-0-0 in favor of the motion.

- Discussion of 2002 ZBA Letter to the Building Inspector regarding referrals to the ZBA: Cheryl Brodeur asked Chairman Esposito if she could provide a brief history on why the Board was discussing this issue. She explained that an applicant had contacted some Town's people regarding having a pre-existing, non-conforming lot and the need to be sent to the Zoning Board in order to make any changes on the to their existing dwelling even when they were not further encroaching any set-back requirements. One of these citizens approached the Building Inspector to see what it was that was making him refer owners of pre-existing, non-conforming lots to the Board. The Building Inspector showed them a copy of a letter provided to him by an earlier ZBA that said that he was to refer all matters that involved non-conforming lots to the Board. Chairman Esposito added that he happened into the Planner's office on an occasion when Judith Cutler of Kopelman and Paige was meeting with the Planner and engaged in a discussion of Variances (which require a twenty day appeal period) vs. Determinations (which do not require a twenty day appeal period). Atty. Cutler advised Chairman Esposito that, at present, the matters should be referred to the ZBA but that the ZBA may opt to grant a Determination rather than a Variance, thereby eliminating the appeal period. The Building Inspector has since made it clear that he would like to see this opinion in writing and Carol Masiello indicated that she would too. Ms. Masiello went on to say that she felt abutters should still be noticed even if only a Determination was being made so that they would have a chance to voice any opinions they might have. All four Board members concurred that they would rather err on the side of caution and advertise, notice abutters, and hold a Public Hearing for these Determinations in spite of the fact they might not have to do so. A motion was made by Carol Masiello, and seconded by John Higgins, to amend the 05/14/02 letter from the ZBA to the Building Inspector such that the new letter would supersede the old letter. The vote was 3-0-0 in favor of the motion.
- Discussion on M.G.L. C. 40 S. 6 re: Matters Being Referred to the ZBA: Discussion was a furtherance of the above citing the split decision opinion of the Supreme Judicial Court on matters being referred to the ZBA and the fact that this could one day be overturned.
- Discussion on the Zoning Act and the Hardship Criteria: Mark Wickstrom directed the Board's attention to MGL C. 40A S. 10 and suggested to members that they stick to this section and be sure that applicants are providing facts to back up their claims of hardship. Mr. Wickstrom suggested that the Board continue a case or deny the Variance if there is not enough evidence of hardship.

- **Vote to Accept and Endorse 09/06/06 ZBA Meeting Minutes:** Carol Masiello made a motion, seconded by John Higgins, to accept as written and endorse the 09/06/06 ZBA Meeting Minutes. The vote was 3-0-0 in favor of the motion.
- **Vote to Accept and Endorse 10/04/06 ZBA Meeting Minutes:** Carol Masiello made a motion, seconded by Mark Wickstrom, to accept as amended (see changes on original of meeting minutes) and endorse the 10/04/06 ZBA Meeting Minutes. The vote was 3-0-0 in favor of the motion.
- **Review and Sign Invoices, if any**
- **Review Mail**

Adjournment: Carol Masiello made a motion, seconded by John Higgins, to adjourn. The vote was 3-0-0 in favor of the motion. The meeting adjourned at 8:45 P.M.

Approved by the Town of Uxbridge Zoning Board of Appeals:

Ernie Esposito, Chairman

Carol Masiello, Member

John Higgins, Member